

**STATE OF NEW MEXICO
ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT
OIL CONSERVATION DIVISION**

**APPLICATION OF EOG RESOURCES, INC.
FOR A NON-STANDARD SPACING AND
PRORATION UNIT AND COMPULSORY
POOLING, EDDY COUNTY, NEW MEXICO.**

Case No. 16434

PRE-HEARING STATEMENT

Jalapeno Corporation (“Jalapeno”) provides this Pre-Hearing Statement for the Division hearing as required by Rule 19.15.4.13B NMAC.

APPEARANCES

APPLICANT

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STATEMENT OF THE CASE

EOG Resources, Inc. (“EOG”) applies for an order from the Division pooling all the uncommitted interests of Jalapeno and others across separate existing 40 acre oil spacing units into a 320 acre project area or spacing unit being the S/2/S2 of Section 23 and the S/2/S2 of Section 24, Township 18 South, Range 30 East, NMPM, in Eddy County, New Mexico. The applicant proposes to drill the Spork 24 Fed Com No. 302H Well, the Spork 24 Fed Com. No. 502H well, and the Spork 24 Fed Com. 503H well in the First and Third Bone Spring. The wells will be horizontal wells with surface locations in Section 24 and a terminus in Section 23.

Jalapeno’s Pre-Hearing Statement is provided based on the Amended Application filed by EOG on September 4, 2018, and the relief requested therein. Jalapeno reserves the right to supplement its response to the Amended Application if EOG seeks relief at the hearing beyond that requested in the application.

MOTION TO DISMISS

Jalapeno moves to dismiss the application to force pool it on the grounds:

Statutory force pooling is not available or authorized against an owner in a spacing unit the applicant demonstrates it has made a good faith effort to reach voluntary agreement with all potentially affected interest owners. EOG has not entered into good faith negotiations with Jalapeno regarding the wells at issue in this application.

Jalapeno and the applicant have been in communication for some time regarding EOG’s proposed Bone Spring wells in subject Sections 23 and 24. While Jalapeno has agreed to participate in the Spork Fed Com. No. 502H well, it has not agreed to

participate in the 503H or the 302H wells. The 503H¹ well at issue in this application would be a second well drilled in the Third Bone Spring. Because Jalapeno has agreed to participate in the first well drilled in the Third Bone Spring, force pooling is not available.

Jalapeno has not agreed to participate in the proposed 302H well or the second Third Bone Spring well due to financial considerations which force Jalapeno to choose among drilling opportunities.

EOG seeks to force pool Jalapeno because Jalapeno will not agree to the entire proposed drilling plan, and because Jalapeno will not agree to EOG's proposed JOA. The proposed JOA, like many presented by large companies to independents, is an adhesion contract. It includes provisions inserted by EOG in the standard Model Form JOA which are oppressive and unacceptable. EOG's position reflects bad faith negotiations where EOG attempts to use the threat of force pooling to coerce Jalapeno, even though Jalapeno has agreed to participate in the well. The force pooling procedure should not be used as a bludgeon, and the Division should deny the application for failure of EOG to engage in good faith negotiations.

JALAPENO CONTENDS THE APPLICATION SHOULD BE DENIED

Jalapeno contends the application should be denied for the following reasons:

1. The Division lacks the authority under the current powers granted to it by the New Mexico Legislature to approve EOG's compulsory pooling application for a requested project area, non-standard oil spacing and proration unit that comprises eight (8) complete, contiguous and existing 40 acre oil spacing units for a horizontal well in

¹ Jalapeno has agreed to participate in whichever of the 502H or the 503H wells is the first well to be drilled in the Third Bone Spring. Jalapeno has not agreed to participate in the second well.

the Bone Spring formation. If the application were granted owners of the separate existing spacing units will be precluded from operating and developing their leases and suffer loss of their correlative rights.

2. An order granting EOG's application with a 200% risk penalty would likely have the effect of taking some owners' property in violation of their constitutional rights afforded by the 5th and 14th Amendments to the United States Constitution. Many parties lack any effective means to protect those rights in this proceeding. As nonconsenting and force pooled mineral owners their property and correlative rights will be expropriated by the order that applicant requests.

3. EOG cannot meet its burden to support its request for a 200% risk penalty. The Division is obligated to take administrative notice of the relative absence of risk in developing the proposed Bone Spring wells in the Delaware Basin of Eddy County. This is particularly true where the applicant proposes to drill a second well in the same spacing unit where the first well has already proved productive and profitable. There is no rationale or factual justification for rewarding applicant with a risk penalty to be collected from the share of revenue to which nonconsenting parties are entitled.

4. The Delaware Basin shale play is a resource play extensively developed by horizontal wells and presents a dependable low risk, highly favorable return on investment. In addition, the economics of the majority owner-operator are unfairly enhanced by the revenue attributable to the risk charged interests of the pooled nonconsent owners.

5. The OCD and OCC lack authorization to impose any risk penalty in force pooling proceedings because there is no objective standard for the imposition of risk

penalties. *Gadeco, LLC v. Industrial Comm.*, 812 N.W.2d 405, 2012 ND 33 (2012) (“The Commission’s decision ... does not explain how it reached the conclusion that the risk penalty could be assessed ... a reviewing court needs to know the reasons ...”) As Commission Chariman Catanach observed in Case No. 15363 (de novo) “If there is a method other than just the automatic imposition of 200 percent, I mean a definition of risk, what we’re talking about, I would appreciate being guided to that. I haven’t found it.” Consequently, any assessment of a risk penalty by the Division is arbitrary and capricious.

6. OCD Order No. R-11992, which adopted Rule 19.15.1.35 NMAC (now Rule 19.15.13.8—Charge for Risks), and which in turn adopted a blanket 200% risk factor in compulsory pooling application, unlawfully (a) allows assessment of a risk penalty without requiring the applicant to support the requested penalty with evidence supporting the penalty, and (b) imposes the burden of proof on an opponent of a compulsory pooling application to justify a different risk factor. This is in violation of the legislative mandate set forth in NMSA 1978 § 70-2-17 and contrary to the standard burden of proof rules imposed on the movant in any proceeding.

PROPOSED EVIDENCE

Jalapeno will present evidence that it has agreed to participate to the extent of its working interest share in the cost of drilling the first of the proposed Third Bone Spring well, assumed to be the 502H well. It cannot be ordered force pooled as to that well. Jalapeno has both operational and economic concerns that compel it to decline participation in the 302H and 503H wells. Jalapeno’s evidence will include data establishing that drilling of the proposed wells as to which it does not consent presents

minimal risk which does not justify the requested risk penalty. The testimony will address the principles set forth in numbered paragraphs 2-5 above.

<u>WITNESSES</u>	<u>EST. TIME</u>	<u>EXHIBITS</u>
Harvey Yates (operator/landman)	1 hour	5 approx.
Emmons Yates (practical oil man/landman)	45 min.	5 approx.

Respectfully submitted,

GALLEGOS LAW FIRM, P.C.

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served on counsel of record by electronic mail this 11th day of October, 2018:

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